

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2819**

4 (By Delegates Guthrie, Hartman, Ashley and Walters)

5  
6 (Originating in the House Committee on the Judiciary)

7  
8 [March 12, 2013]

9  
10 A BILL to amend and reenact §33-31-16a of the Code of West  
11 Virginia, 1931, as amended; and to amend and reenact §33-40-3  
12 of said code, all relating to the financial oversight of  
13 entities regulated by the Insurance Commissioner; requiring  
14 captive insurance companies organized as risk retention groups  
15 to comply with risk-based capital for insurers' provisions and  
16 state rules; and incorporating a solvency trend test for  
17 property and casualty insurance companies.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §33-31-16a of the Code of West Virginia, 1931, as  
20 amended, be amended and reenacted; and that §33-40-3 of said code  
21 be amended and reenacted, all to read as follows:

22 **ARTICLE 31. CAPTIVE INSURANCE.**

23 **§33-31-16a. Laws applicable; Risk Retention Groups.**

24 In addition to the applicable provisions of this article, any

1 captive insurance company organized as a risk retention group is  
2 subject to the following provisions of this chapter: section nine,  
3 article two (examination of insurers, agents, brokers and  
4 solicitors; access to books, records, etc.); section fourteen,  
5 article four (financial statement filings; annual and quarterly  
6 statements; required format; foreign insurers; agents of the  
7 commissioner); section fifteen-a, article four (credit for  
8 reinsurance; definitions; requirements; trust accounts; reductions  
9 from liability; security; effective date); article seven (assets  
10 and liabilities); article ten (rehabilitation and liquidation);  
11 article twenty-seven (insurance holding company systems); article  
12 thirty-three (annual audited financial report); article thirty-four  
13 (administrative supervision); ~~article thirty-four-a (standards and~~  
14 ~~commissioner's authority for companies deemed to be in hazardous~~  
15 ~~financial condition);~~ article thirty-five (criminal sanctions for  
16 failure to report impairment); article thirty-six (Business  
17 Transacted with Producer Controlled Property/Casualty Insurer Act);  
18 article thirty-seven (managing general agents); article  
19 thirty-eight (Reinsurance Intermediary Act); article forty  
20 (risk-based capital for insurers); and article forty-one (Insurance  
21 Fraud Prevention Act), ~~of this chapter and~~ as well as any rules  
22 promulgated ~~thereunder~~ under those provisions in accordance with  
23 article three, chapter twenty-nine-a of this code, including any  
24 rule relating to property and casualty actuarial opinions.

1 **ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.**

2 **§33-40-3. Company action level event.**

3 (a) "Company action level event" means any of the following  
4 events:

5 (1) The filing of an RBC report by an insurer which indicates  
6 that:

7 (A) The insurer's total adjusted capital is greater than or  
8 equal to its regulatory action level RBC, but less than its company  
9 action level RBC; ~~or~~

10 (B) If a life and/or health insurer, the insurer has total  
11 adjusted capital which is greater than or equal to its company  
12 action level RBC, but less than the product of its authorized  
13 control level RBC and two and one-half and has a negative trend; or

14 (C) If a property and casualty insurer, the insurer has total  
15 adjusted capital which is greater than or equal to its company  
16 action level RBC, but less than the product of its authorized  
17 control level RBC and three and triggers the trend test determined  
18 in accordance with the trend test calculation included in the  
19 property and casualty RBC instructions;

20 (2) The notification by the commissioner to the insurer of an  
21 adjusted RBC report that indicates an event in subdivision (1) of  
22 this subsection, provided the insurer does not challenge the  
23 adjusted RBC report under section seven of this article; or

24 (3) If, pursuant to section seven of this article, an insurer

1 challenges an adjusted RBC report that indicates the event in  
2 subdivision (1) of this subsection, the notification by the  
3 commissioner to the insurer that the commissioner has, after a  
4 hearing, rejected the insurer's challenge.

5 (b) In the event of a company action level event, the insurer  
6 shall prepare and submit to the commissioner an RBC plan which  
7 shall:

8 (1) Identify the conditions which contribute to the company  
9 action level event;

10 (2) Contain proposals of corrective actions which the insurer  
11 intends to take and would be expected to result in the elimination  
12 of the company action level event;

13 (3) Provide projections of the insurer's financial results in  
14 the current year and at least the four succeeding years or, in the  
15 case of an HMO, in the current year and at least the two succeeding  
16 years, both in the absence of proposed corrective actions and  
17 giving effect to the proposed corrective actions, including  
18 projections of statutory operating income, net income, capital  
19 and/or surplus. (The projections for both new and renewal business  
20 may include separate projections for each major line of business  
21 and separately identify each significant income, expense and  
22 benefit component);

23 (4) Identify the key assumptions impacting the insurer's  
24 projections and the sensitivity of the projections to the

1 assumptions; and

2 (5) Identify the quality of, and problems associated with, the  
3 insurer's business, including, but not limited to, its assets,  
4 anticipated business growth and associated surplus strain,  
5 extraordinary exposure to risk, mix of business and use of  
6 reinsurance, if any, in each case.

7 (c) The RBC plan shall be submitted:

8 (1) Within forty-five days of the company action level event;  
9 or

10 (2) If the insurer challenges an adjusted RBC report pursuant  
11 to section seven of this article, within forty-five days after  
12 notification to the insurer that the commissioner has, after a  
13 hearing, rejected the insurer's challenge.

14 (d) Within sixty days after the submission by an insurer of an  
15 RBC plan to the commissioner, the commissioner shall notify the  
16 insurer whether the RBC plan may be implemented or is, in the  
17 judgment of the commissioner, unsatisfactory. If the commissioner  
18 determines the RBC plan is unsatisfactory, the notification to the  
19 insurer shall set forth the reasons for the determination and may  
20 set forth proposed revisions which will render the RBC plan  
21 satisfactory in the judgment of the commissioner. Upon  
22 notification from the commissioner, the insurer shall prepare a  
23 revised RBC plan, which may incorporate by reference any revisions  
24 proposed by the commissioner, and shall submit the revised RBC plan

1 to the commissioner:

2 (1) Within forty-five days after the notification from the  
3 commissioner; or

4 (2) If the insurer challenges the notification from the  
5 commissioner under section seven of this article, within forty-five  
6 days after a notification to the insurer that the commissioner has,  
7 after a hearing, rejected the insurer's challenge.

8 (e) In the event of a notification by the commissioner to an  
9 insurer that the insurer's RBC plan or revised RBC plan is  
10 unsatisfactory, the commissioner may, at the commissioner's  
11 discretion, subject to the insurer's right to a hearing under  
12 section seven of this article, specify in the notification that the  
13 notification constitutes a regulatory action level event.

14 (f) Every domestic insurer that files an RBC plan or revised  
15 RBC plan with the commissioner shall file a copy of the RBC plan or  
16 revised RBC plan with the Insurance Commissioner in any state in  
17 which the insurer is authorized to do business if:

18 (1) The state has an RBC provision substantially similar to  
19 subsection (a), section eight of this article; and

20 (2) The Insurance Commissioner of that state has notified the  
21 insurer of its request for the filing in writing, in which case the  
22 insurer shall file a copy of the RBC plan or revised RBC plan in  
23 that state no later than the later of:

24 ~~(I)~~ (A) Fifteen days after the receipt of notice to file a

1 copy of its RBC plan or revised RBC plan with the state; or  
2 ~~(ii)~~ (B) The date on which the RBC plan or revised RBC plan is  
3 filed under subsections (c) and (d) of this section.